

Amendments to Senate Bill No. 410
2nd Reading/2nd House Copy

Requested by Representative Roy Hollandsworth

For the House Appropriations Committee

Prepared by Jaret Coles
April 15, 2015 (4:47pm)

1. Title, page 1, line 12.

Following: "AUTHORITY;"

Insert: "PROVIDING A STATUTORY APPROPRIATION;"

Following: "15-30-2110"

Insert: ", 15-30-2618, 15-31-511, 17-7-502,"

2. Page 1, line 26.

Following: line 25

Insert: "(1) "Department" means the department of revenue
provided for in 2-15-1301."

Renumber: subsequent subsections

3. Page 3, line 30 through page 4, line 1.

Strike: "set the maximum receivable amount"

Insert: "determine the allocation"

4. Page 4, line 1.

Strike: "or large district"

Following: "based on"

Strike: "a"

Insert: "the"

5. Page 4, line 2.

Following: the first "educators"

Insert: "compared"

6. Page 4, line 3.

Strike: "or large district"

7. Page 4, line 23.

Strike: "DEPARTMENT"

Insert: "superintendent of public instruction"

8. Page 4, line 25.

Following: "._"

Insert: "In order to implement and administer the provisions of
[sections 1 through 6], the department and the
superintendent of public instruction shall exchange taxpayer

information and develop policies to prevent the unauthorized disclosure of confidential records and information."

9. Page 4, line 27.

Strike: "Appropriations may be made from"

Insert: "Money in"

Following: "account"

Insert: "is statutorily appropriated, as provided in 17-7-502,"

10. Page 9, line 2.

Following: "\$3 million"

Insert: "or the aggregate limit provided for in subsection
(5)(a)(iii)"

11. Page 9, line 3.

Strike: "made by taxpayers or"

12. Page 9, line 4.

Following: "10% for"

Strike: "each"

Insert: "the"

13. Page 9, line 5.

Strike: "year"

Insert: "years"

14. Page 9, line 6.

Following: line 5

Insert: "(iii) If the aggregate limit is increased in any tax year, the department shall use the new limit as the base aggregate limit for succeeding tax years until a new aggregated limit is established under the provisions of subsection (5)(a)(ii)."

15. Page 9, line 6.

Strike: "TAX credits"

Insert: "donations"

16. Page 9, line 9 through line 12.

Strike: "If a disallowance" on line 9 through "15-1-216." on line
12

17. Page 10, line 11.

Following: "\$3 million"

Insert: "or the aggregate limit provided for in subsection
(5)(a)(iii)"

18. Page 10, line 12.

Strike: "claimed by taxpayers or"

19. Page 10, line 13.

Following: "10% for"

Strike: "each"

Insert: "the"

Strike: "year"

Insert: "years"

20. Page 10, line 14.

Following: line 13

Insert: "(iii) If the aggregate limit is increased in any tax year, the department shall use the new limit as the base aggregate limit for succeeding tax years until a new aggregated limit is established under the provisions of subsection (5)(a)(ii)."

21. Page 10, line 17 through line 19.

Strike: "If a disallowance" on line 17 through "15-1-216." on line 19

22. Page 11, line 23.

Following: ";

Insert: "and"

23. Page 11, line 24 through line 25.

Strike: ": (A)"

24. Page 11, line 26.

Strike: "; and"

Insert: "."

25. Page 11, line 27 through line 30.

Strike: subsection (B) in its entirety

26. Page 19, line 16.

Following: line 15

Insert: "**Section 24.** Section 15-30-2618, MCA, is amended to read:

"**15-30-2618. Confidentiality of tax records.** (1) Except as provided in 5-12-303, 15-1-106, 17-7-111, and subsections (8) and (9) of this section, in accordance with a proper judicial order, or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any individual report or individual return required under this chapter or any other information secured in the administration of this chapter; or

(b) any federal return or federal return information disclosed on any return or report required by rule of the department or under this chapter.

(2) (a) The officers charged with the custody of the

reports and returns may not be required to produce them or evidence of anything contained in them in an action or proceeding in a court, except in an action or proceeding:

(i) to which the department is a party under the provisions of this chapter or any other taxing act; or

(ii) on behalf of a party to any action or proceedings under the provisions of this chapter or other taxes when the reports or facts shown by the reports are directly involved in the action or proceedings.

(b) The court may require the production of and may admit in evidence only as much of the reports or of the facts shown by the reports as are pertinent to the action or proceedings.

(3) This section does not prohibit:

(a) the delivery to a taxpayer or the taxpayer's authorized representative of a certified copy of any return or report filed in connection with the taxpayer's tax;

(b) the publication of statistics classified to prevent the identification of particular reports or returns and the items of particular reports or returns; or

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of 15-30-2630.

(4) The department may deliver to a taxpayer's spouse the taxpayer's return or information related to the return for a tax year if the spouse and the taxpayer filed the return with the filing status of married filing separately on the same return. The information being provided to the spouse or reported on the return, including subsequent adjustments or amendments to the return, must be treated in the same manner as if the spouse and the taxpayer filed the return using a joint filing status for that tax year.

(5) Reports and returns must be preserved for at least 3 years and may be preserved until the department orders them to be destroyed.

(6) Any offense against subsections (1) through (5) is punishable by a fine not exceeding \$500. If the offender is an officer or employee of the state, the offender must be dismissed from office or employment and may not hold any public office or public employment in this state for a period of 1 year after dismissal or, in the case of a former officer or employee, for 1 year after conviction.

(7) This section may not be construed to prohibit the department from providing taxpayer return information and information from employers' payroll withholding reports to:

(a) the department of labor and industry to be used for the purpose of investigation and prevention of noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws; or

(b) the state fund to be used for the purpose of investigation and prevention of noncompliance, fraud, and abuse under the workers' compensation program.

(8) The department may permit the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax upon the incomes of individuals or the authorized representative of either officer to inspect the return of income of any individual or may furnish to the officer or an authorized representative an abstract of the return of income of any individual or supply the officer with information concerning an item of income contained in a return or disclosed by the report of an investigation of the income or return of income of an individual, but the permission may be granted or information furnished only if the statutes of the United States or of the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter.

(9) On written request to the director or a designee of the director, the department shall furnish:

(a) to the department of justice all information necessary to identify those persons qualifying for the additional exemption for blindness pursuant to 15-30-2114(4), for the purpose of enabling the department of justice to administer the provisions of 61-5-105;

(b) to the department of public health and human services information acquired under 15-30-2616, pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of public assistance fraud and abuse, provided notice to the applicant has been given;

(c) to the department of labor and industry for the purpose of prevention and detection of fraud and abuse in and eligibility for benefits under the unemployment compensation and workers' compensation programs information on whether a taxpayer who is the subject of an ongoing investigation by the department of labor and industry is an employee, an independent contractor, or self-employed;

(d) to the department of fish, wildlife, and parks specific information that is available from income tax returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting and fishing licenses;

(e) to the board of regents information required under 20-26-1111;

(f) to the legislative fiscal analyst and the office of budget and program planning individual income tax information as provided in 5-12-303, 15-1-106, and 17-7-111. The information provided to the office of budget and program planning must be the same as the information provided to the legislative fiscal analyst.

(g) to the department of transportation farm income information based on the most recent income tax return filed by an applicant applying for a refund under 15-70-223 or 15-70-362,

provided that notice to the applicant has been given as provided in 15-70-223 and 15-70-362. The information obtained by the department of transportation is subject to the same restrictions on disclosure as are individual income tax returns.

(h) to the commissioner of insurance's office all information necessary for the administration of the small business health insurance tax credit provided for in Title 33, chapter 22, part 20;

(i) to the superintendent of public instruction information required under [section 5]."

{ Internal References to 15-30-2618:

15-6-193x 15-68-815x 53-2-211x }"

"Section 25. Section 15-31-511, MCA, is amended to read:

"15-31-511. Confidentiality of tax records. (1) Except as provided in this section, in accordance with a proper judicial order, or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any return or report required under this chapter or any other information relating to taxation secured in the administration of this chapter; or

(b) any federal return or information in or disclosed on a federal return or report required by law or rule of the department under this chapter.

(2) (a) An officer or employee charged with custody of returns and reports required by this chapter may not be ordered to produce any of them or evidence of anything contained in them in any administrative proceeding or action or proceeding in any court, except:

(i) in an action or proceeding in which the department is a party under the provisions of this chapter; or

(ii) in any other tax proceeding or on behalf of a party to an action or proceeding under the provisions of this chapter when the returns or reports or facts shown in them are directly pertinent to the action or proceeding.

(b) If the production of a return, report, or information contained in them is ordered, the court shall limit production of and the admission of returns, reports, or facts shown in them to the matters directly pertinent to the action or proceeding.

(3) This section does not prohibit:

(a) the delivery of a certified copy of any return or report filed in connection with a return to the taxpayer who filed the return or report or to the taxpayer's authorized representative;

(b) the publication of statistics prepared in a manner that prevents the identification of particular returns, reports, or items from returns or reports;

(c) the inspection of returns and reports by the attorney general or other legal representative of the state in the course of an administrative proceeding or litigation under this chapter;

(d) access to information under subsection (4);

(e) the director of revenue from permitting a representative of the commissioner of internal revenue of the United States or a representative of a proper officer of any state imposing a tax on the income of a taxpayer to inspect the returns or reports of a corporation. The department may also furnish those persons abstracts of income, returns, and reports; information concerning any item in a return or report; and any item disclosed by an investigation of the income or return of a corporation. The director of revenue may not furnish that information to a person representing the United States or another state unless the United States or the other state grants substantially similar privileges to an officer of this state charged with the administration of this chapter.

(f) the disclosure of information to the commissioner of insurance's office that is necessary for the administration of the small business health insurance tax credit provided for in Title 33, chapter 22, part 20.

(4) On written request to the director or a designee of the director, the department shall:

(a) allow the inspection of returns and reports by the legislative auditor, but the information furnished to the legislative auditor is subject to the same restrictions on disclosure outside that office as provided in subsection (1); and

(b) provide corporate income tax and alternative corporate income tax information, including any information that may be required under Title 15, chapter 30, part 33, to the legislative fiscal analyst, as provided in 5-12-303 or 15-1-106, and the office of budget and program planning, as provided in 15-1-106 or 17-7-111. The information furnished to the legislative fiscal analyst and the office of budget and program planning is subject to the same restrictions on disclosure outside those offices as provided in subsection (1).

(c) furnish to the superintendent of public instruction information required under [section 5].

(5) A person convicted of violating this section shall be fined not to exceed \$500. If a public officer or public employee is convicted of violating this section, the person is dismissed from office or employment and may not hold any public office or public employment in the state for a period of 1 year after dismissal or, in the case of a former officer or employee, for 1 year after conviction."

{ Internal References to 15-31-511:

15-31-406x 15-38-109 x 15-68-815x }

Insert: "Section 26. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following

provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-247; 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; [section 5]; 20-9-534; 20-9-622; 20-26-1503; 22-1-327; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-51-501; 39-1-105; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-206; 44-13-102; 53-1-109; 53-1-215; 53-2-208; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 76-13-416; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; 87-1-603; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 14, Ch. 374, L. 2009, the inclusion of 53-9-113 terminates June 30, 2015; pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of 30-10-1004 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30, 2019; pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates June 30, 2017;

pursuant to sec. 11(2), Ch. 17, L. 2013, the inclusion of 17-3-112 terminates on occurrence of contingency; pursuant to secs. 3 and 5, Ch. 244, L. 2013, the inclusion of 22-1-327 is effective July 1, 2015, and terminates July 1, 2017; and pursuant to sec. 10, Ch. 413, L. 2013, the inclusion of 2-15-247, 39-1-105, 53-1-215, and 53-2-208 terminates June 30, 2015.)"

{ Internal References to 17-7-502: *verification not required per Heiman rule

2-15-247	2-17-105	5-11-120	5-11-407
5-13-403	7-4-2502	10-1-108	10-1-1202
10-1-1303	10-2-603	10-3-203	10-3-310
10-3-312	10-3-312	10-3-314	10-4-301
15-1-121	15-1-218	15-35-108	15-35-108
15-35-108	15-35-108	15-36-332	15-36-332
15-37-117	15-39-110	15-65-121	15-70-101
15-70-369	15-70-601	16-11-509	17-1-508
17-3-106	17-3-112	17-3-212	17-3-222
17-3-241	17-6-101	17-7-501	18-11-112
19-3-319	19-6-404	19-6-410	19-9-702
19-13-604	19-17-301	19-18-512	19-19-305
19-19-506	19-20-604	19-20-607	19-21-203
20-8-107	20-9-534	20-9-622	20-26-1503
22-1-327	22-3-1004	23-4-105	23-4-105
23-5-306	23-5-409	23-5-612	23-7-301
23-7-402	23-7-402	23-7-402	30-10-1004
37-43-204	37-51-501	39-1-105	39-71-503
41-5-2011	42-2-105	44-4-1101	44-12-206
44-13-102	53-1-109	53-1-215	53-2-208
53-9-113	53-24-108	53-24-108	53-24-206
60-11-115	61-3-415	69-3-870	75-1-1101
75-5-1108	75-6-214	75-11-313	76-13-150
76-13-416	77-1-108	77-2-362	80-2-222
80-4-416	80-11-518	81-1-112	81-7-106
81-10-103	82-11-161	82-11-161	85-20-1504
85-20-1505	87-1-603	90-1-115	90-1-115
90-1-205	90-1-504	90-3-1003	90-6-331
90-9-306 }			

Renumber: subsequent sections

- END -

Explanation -

Technical note #1 of the fiscal note, which seeks clarification for the references to the Department of Revenue and the Office of Public Instruction in Section 5, is addressed through the following amendments: #2 and #7.

Technical note #2 of the fiscal note, which pertains to the proportion that any given school can receive, is addressed in the following amendments: #3 through #6.

Technical note #3 of the fiscal note, which pertains to the need for an appropriation, is addressed in the following amendments: #1, #9, and #26.

Further clarification items: Amendments #10 through #25 were drafted to address concerns that were raised by the Department of Revenue (#11, #15 through #16, #18, #21 through #25) in addition to requiring tax credits to be preapproved up to the aggregate limit each year (#10, #12 through #14, #17, #19 through #20) before there is a corresponding increase in the aggregate amount.